

Retail sales of soft drinks to airlines in CITY are subject to the Home Rule Municipal Soft Drink Retailers' Occupation Tax, in addition to the State Retailers' Occupation Tax and Use Tax. See 65 ILCS 5/8-11-6b (1996 State Bar Edition). This is a GIL).

June 22, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated May 7, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please accept this letter as our request for rulings regarding exemption from the 3% CITY Soft Drink Tax on sales of soft drinks to airlines.

Facts

COMPANY is an operator of airline food service facilities. COMPANY sells food and beverages to airlines for in-flight passenger feeding. The food and beverage items are prepared, assembled and packaged on airline owned equipment and then delivered to and boarded on aircraft parked at the passenger terminal departure gates. COMPANY operates such facilities at the AIRPORT.

Discussion

One of the items that COMPANY sells to its airline customers is carbonated beverage (canned soft drinks). COMPANY has been charging the 3% CITY Soft Drink Tax on its sales of carbonated beverage to its airline customers and remitting the tax to the Illinois Department of Revenue ('Department') since April 1, 1994.

It has come to our attention however that there is an exemption from this tax when the soft drinks are provided free to customers, by a business during the course of doing business. This exemption is covered in the Fact Sheet - CITY Soft Drink Tax -- which was developed by the Department. More specifically, the Fact Sheet deals with the matter in a question and answer format, as follows:

Question: What tax do I owe if I provide free soft drinks to my customers during the course of my business?

Answer: You are not liable for the CITY Soft Drink Tax on free soft drinks you provide in the course of your business. However, you owe Illinois Use Tax on such soft drinks at the rate of 6.25 percent of your cost price. You must report and pay use tax on lines 12a and 12b of Form ST-1.

The airlines give the soft drinks to their in-flight passengers, free of charge, in the performance of their airline business. Accordingly, the airlines have asked COMPANY to cease charging the 3% CITY Soft Drink Tax on sales of carbonated beverage to them.

Ruling Request

COMPANY requests rulings, by the Department, to the following questions:

1. Are the sales of soft drinks, by COMPANY to airlines exempt from the 3% CITY Soft Drink Tax.
2. Should COMPANY continue to charge the state sales tax at the rate of 6.25%, plus any local sales tax, on its sales of soft drinks to its airline customers, thereby avoiding the necessity of the airlines having to file and pay use tax on their purchases of soft drinks from COMPANY?
3. Should COMPANY file a claim for refund, on behalf of its airline customers, for the incorrectly charged 3% CITY Soft Drink Tax over the past four years?

COMPANY respectfully requests your ruling to these questions and any other suggestions that you may have regarding the proper administration of this tax, by COMPANY and the airlines, at your earliest possible convenience. Please do not hesitate to contact us if you have any questions or require additional information.

Illinois taxes the retail sale and use of tangible personal property under two separate but related statutes. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1996 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1996 State Bar Edition).

In addition, under the authority of Section 8-11-6b of the Illinois Municipal Code, 65 ILCS 5/8-11-6b (1996 State Bar Edition), the corporate authorities of a home rule municipality with a population in excess of 1,000,000 may impose a Home Rule Municipal Soft Drink Retailers' Occupation Tax upon all persons engaged in the business of selling soft drinks (other than fountain soft drinks) at retail in the municipality based on the gross receipts from those sales made in the course of such business. Retailers subject to the Home Rule

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Municipal Soft Drink Retailers' Occupation Tax may reimburse themselves for their tax liability by separately stating the tax as an additional charge, which charge may be stated in combination, in a single amount, with State taxes that such retailers are required to collect under the Use Tax Act.

"Sale at retail" means, in part, any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration. See 86 Ill. Adm. Code 130.201, enclosed. The City of CITY has imposed such a Home Rule Municipal Soft Drink Retailers' Occupation Tax. Therefore, retail sales of soft drinks in CITY to airlines are subject to the Home Rule Municipal Soft Drink Retailers' Occupation Tax, in addition to the State Retailers' Occupation Tax and Use Tax.

COMPANY does not provide free soft drinks to its customers. COMPANY sells soft drinks to airlines that will use the soft drinks by giving them free of charge to their customers. There would be no tax incurred only if COMPANY provided free soft drinks to the airlines. Since this is not the case, sales of soft drinks by COMPANY in CITY to airlines are subject to the Home Rule Municipal Soft Drink Retailers' Occupation Tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.